

Office of the
Legislative Fiscal Analyst

FY 2004 Budget Recommendations

Joint Appropriations Subcommittee for
Capital Facilities and Administrative Services

Utah Department of Administrative Services
Judicial Conduct Commission

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1.0 Summary: Judicial Conduct Commission

The Judicial Conduct Commission is a quasi-independent agency that investigates and resolves complaints against Utah judges.

The Commission is comprised of 11 members who represent the legal profession, the Legislature, the Judicial Branch and private citizens. Four members are Legislators, three are attorneys for the Bar Commission, two are judges (although only one has voting authority) and two are citizens appointed by the Governor.

A Constitutional Amendment passed in 1984 established the Commission as part of Article VIII, Section 13 of the Utah Constitution. Commission composition is defined in Utah Code Section 78-7-27.

Financial Summary

	Analyst FY 2004 Base	Analyst FY 2004 Changes	Analyst FY 2004 Total
Financing			
General Fund	218,500		218,500
Beginning Nonlapsing	8,400		8,400
Total	<u>\$226,900</u>	<u>\$0</u>	<u>\$226,900</u>
Programs			
Judicial Conduct Commission	226,900		226,900
Total	<u>\$226,900</u>	<u>\$0</u>	<u>\$226,900</u>
FTE/Other			
Total FTE	2		2

2.0 Issues:

2.1 JCC Audit Calls for Openness

At the direction of Legislative Management, the Auditor General released an initial performance audit of the JCC in October. The audit compared the Utah JCC to similar organizations in other states and found Utah's process for sanctioning judges is less open to the public than those found in other states. Section 3.2 of this report provides further consideration of this issue.

2.2 JCC Anticipates More Hearings

Most JCC complaints are resolved without the necessity of confidential hearings. From 1995 through July of 2002, only three such confidential hearings were held. However, since July of 2002, two confidential hearings have been held and three more are scheduled to be held within the next two months. That change arises from a JCC commitment to resolve matters much more quickly and efficiently. The JCC anticipates holding several hearings each year, requiring additional expenditures for Commissioner per diem and transcription costs. These additional expenses can be handled within existing funds at this point, but should be monitored to ensure that the JCC can properly function in the future if the pattern continues. The Analyst believes that more hearings provide more accountability and will be worth the additional expenditures for travel and lodging.

3.0 Programs: Judicial Conduct Commission

	2002 Actual	2003 Estimated	2004 Analyst	Est/Analyst Difference
Financing				
General Fund	227,600	218,500	218,500	
Beginning Nonlapsing	19,700	13,400	8,400	(5,000)
Closing Nonlapsing	(13,400)	(8,400)		8,400
Total	<u>\$233,900</u>	<u>\$223,500</u>	<u>\$226,900</u>	<u>\$3,400</u>
Expenditures				
Personal Services	184,000	153,200	153,200	
In-State Travel	2,600	7,000	7,000	
Out of State Travel	1,700	2,000	2,000	
Current Expense	42,200	55,300	58,700	3,400
DP Current Expense	3,400	6,000	6,000	
Total	<u>\$233,900</u>	<u>\$223,500</u>	<u>\$226,900</u>	<u>\$3,400</u>
FTE/Other				
Total FTE	2	2	2	
*General and school funds as revised by Supplemental Bills I-V, 2002 General and Special Sessions. Other funds as estimated by agency				

The Judicial Conduct Commission consists of a Director and an Administrative Assistant who investigate and resolve complaints against Utah judges. The staff manages claims, assigns inspectors, and prosecutes judges when necessary. The Commission dismisses approximately 85 percent of all claims, ten percent are resolved through formal correspondence and five percent require a formal hearing. Current expense in this budget is used to hire outside investigators and temporary employees based on case load. Since caseload varies from year to year, the Analyst recommends the following intent Language:

It is the intent of the Legislature that funds for the Judicial Conduct Commission not lapse

3.1 Annual Report

The Judicial Conduct Commission is required to file an annual report. The report follows the 4.0 section of this document.

3.2 JCC Performance Audit

In October the Legislative Auditor General (LAG) released a report¹ calling for a more open process in sanctioning judges. The report found that the Utah JCC process is more confidential than those found in other states even though it is similar to other state judicial oversight panels in cost, operation and structure. The Auditor General recommendation included clarifying statute to address issues of confidentiality and to provide official auditing access to the confidential work papers of the JCC.

¹ October 2002. *A Review of the Judicial Conduct Commission, Report Number 2002-06*. Office of the Legislative Auditor General.

The Auditor recommendation flows from the fact that neither the JCC nor its staff could share confidential work papers with the Legislative Auditor General without violating confidentiality provisions of the JCC's statute. State employees and officers receive immunity from individual liability for taking official action, but that liability does not extend to actions taken that violate statute. Following release of the Audit, the Utah Supreme Court issued an order clarifying that Legislative Staff could examine confidential working papers in assessing the performance of the JCC. With this new authorization, the LAG resumed audit work in January and will release a follow-up report during the 2003 interim.

*JCC should be
more open*

The Analyst believes that the State would benefit from a more open process with the JCC. The annual report following section 4.0 reveals that the Supreme Court issued five orders of "informal reprimand." Informal reprimands do not identify which judge is in violation of the judicial canons nor does it make clear if the five reprimands were to five separate judges or to one judge who committed five offenses. Such information would be valuable to the public for retention elections and would provide further public confidence in the judicial system.

Budget policy is a powerful legislative tool for enforcing priorities in state agencies. However, if the Legislature wants the JCC to be more open then more formal statutory changes will likely be required. The budget for the Judicial Conduct Commission is unique in that the budget provides funds for only two staff members and limited contracts with private investigators. In the case of the JCC, attacking the administrative budget likely will have the opposite effect if the Legislature wants the Commission to be more open. Given that the staff responds to the unpaid Commissioners and to statute, reducing the budget of the JCC would actually make it more difficult to provide information. The Analyst supports a more open process that will better inform the Legislature and the public, but realizes that the change needs to be made in a formal manner to ensure Legislative intent is followed.

4.0 Additional Information: Judicial Conduct Commission

	2000	2001	2002	2003	2004
Financing	Actual	Actual	Actual	Estimated*	Analyst
General Fund	219,700	224,800	227,600	218,500	218,500
Beginning Nonlapsing	45,400	39,500	19,700	13,400	8,400
Closing Nonlapsing	(39,500)	(19,700)	(13,400)	(8,400)	
Total	\$225,600	\$244,600	\$233,900	\$223,500	\$226,900
Programs					
Judicial Conduct Commission	225,600	244,600	233,900	223,500	226,900
Total	\$225,600	\$244,600	\$233,900	\$223,500	\$226,900
Expenditures					
Personal Services	182,700	187,200	184,000	153,200	153,200
In-State Travel	3,800	600	2,600	7,000	7,000
Out of State Travel	2,200	6,700	1,700	2,000	2,000
Current Expense	34,700	45,900	42,200	55,300	58,700
DP Current Expense	2,200	4,200	3,400	6,000	6,000
Total	\$225,600	\$244,600	\$233,900	\$223,500	\$226,900
FTE/Other					
Total FTE	2	2	2	2	2

*General and school funds as revised by Supplemental Bills I-V, 2002 General and Special Sessions. Other funds as estimated by agency.



ANNUAL REPORT FY 2002

State of Utah Judicial Conduct Commission

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Creation and Authority of the Judicial Conduct Commission



Although it had existed previously as a legislatively created body, Utah's Judicial Conduct Commission (JCC) was constitutionally established in 1984. See Constitution of Utah, Article VIII, Section 13. The constitution authorizes the Legislature to statutorily establish the composition and procedures of the JCC, and those provisions are found in Utah Code, Title 78, Chapter 8.

The JCC is empowered to investigate and conduct confidential hearings regarding complaints against state, county and municipal judges throughout the state. The JCC may order the reprimand, censure, suspension, removal, or involuntary retirement of a judge for any of the following reasons:

- ✓ action which constitutes willful misconduct in office;
- ✓ final conviction of a crime punishable as a felony under state or federal law;
- ✓ willful and persistent failure to perform judicial duties;
- ✓ disability that seriously interferes with the performance of judicial duties; or
- ✓ conduct prejudicial to the administration of justice which brings a judicial office into disrepute.

Prior to the implementation of any such JCC order, the Utah Supreme Court must review the JCC's proceedings. The Supreme Court may then issue its order implementing, rejecting, or modifying the JCC's order.

Confidentiality of JCC Records and Proceedings



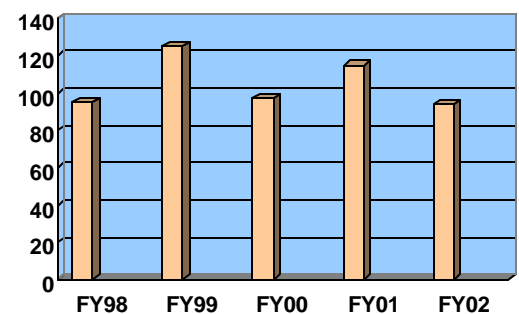
Except in certain limited circumstances specified by statute, all complaints, papers and testimony received or maintained by the JCC, and the record of any confidential hearings conducted by the JCC, are confidential, and may not be disclosed until the Supreme Court has entered its order implementing a JCC order of discipline.

Number of Complaints Received and Resolved



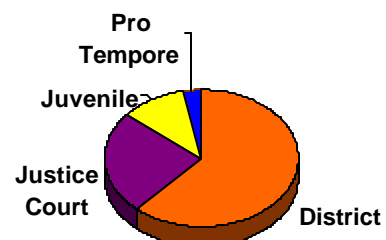
The JCC receives and investigates about 100 complaints each year. Of that total, approximately 80% are dismissed at the conclusion of the investigation stage, either because the basis of the complaint is an appealable issue beyond the JCC's jurisdiction, or because the investigation results in a finding of no judicial misconduct.

Number of Complaints Received Per Year



Of the 94 complaints received in FY 2002, 77 have been dismissed, 16 are the subject of ongoing investigations, and one resulted in the issuance of an informal order of reprimand. Of the 94 complaints received:

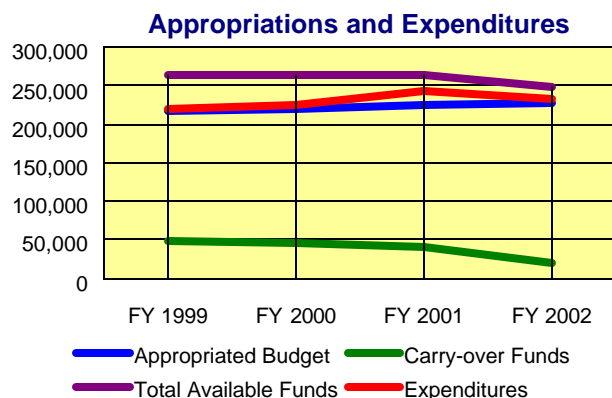
- 58 were filed against district judges
- 23 were filed against justice court judges
- 10 were filed against juvenile judges
- 3 were filed against pro tempore judges
- 0 were filed against appellate judges



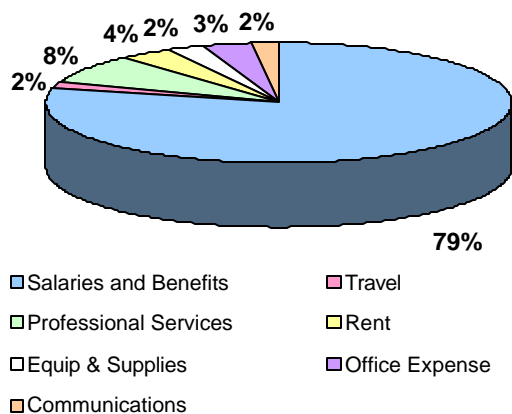
FY 2002 Budget



The JCC operates on approximately \$230,000 per year, most of which is appropriated annually by the Legislature. Additional funding comes from agency savings, or carry-over funds. In FY 1999, these carry-over funds exceeded \$45,000, but by the close of FY 2002, they had been reduced to \$13,500.



Of the \$233,800 spent in FY 2002, nearly 80% was expended for employees' salaries and benefits. Other expenditures are also shown below:



JCC Membership



The membership of the JCC at the conclusion of FY 2002 was:

C. Dane Nolan, Chair	Sylvia Bennion, Co-Chair
David Bird	Hon. William Bohling
Rep. Katherine Bryson	Sen. Gene Davis
Denise Dragoo	Rep. Neal Hendrickson
Hon. Gordon Low	Rod Orton
Sen. Michael Waddoups	

Others who served during FY 2002 were:

Rep. Gary Cox	Ken Warnick
Sen. Pete Suazo	

Summary of Discipline Implemented in FY 2002



Although no public discipline was implemented in FY 2002, the Utah Supreme Court implemented five Orders of Informal Reprimand:

1. A judge responded to a jailed defendant's request for a concurrent sentence by denying the request in writing, without providing a copy of the denial to the prosecutor. The judge's response contained a flowery description of the amount of time the defendant would have to remain in jail. It was determined that the judge violated Code of Judicial Conduct (CJC) Canon 3B(7), which prohibits ex parte communications, and CJC Canon 3B(4), which requires judges to treat litigants courteously.
2. A judge spoke discourteously to litigants in four separate cases. It was determined that the judge violated CJC Canon 3B(4), which requires judges to treat litigants courteously.
3. A judge attended a protest rally, and while there, referred to President Clinton as the "anti-Christ." It was determined that the judge violated CJC Canon 2B, which prohibits judges from lending the prestige of the judicial office to advance the interests of others, and CJC Canon 4A, which requires judges to conduct their extra-judicial activities in a manner that does not demean or exploit the judicial office.
4. A judge displayed an obscene hand gesture to transportation officers who were present in the courtroom. It was determined that the judge violated CJC Canon 3B(4), which requires judges to treat persons who appear before them in a courteous manner, and CJC Canon 2, which requires judges to avoid impropriety and the appearance of impropriety in all activities.
5. On several occasions, a judge instructed parties who appeared before him to get Christ in their life. It was determined that the judge violated CJC Canon 3B(5), which requires judges to perform judicial duties without bias or prejudice, including bias or prejudice based upon religion.

Staff Changes



Steven H. Stewart, the Executive Director of the JCC for nearly seven years, resigned his post to serve as a mission president for the Church of Jesus Christ of Latter-day Saints. Colin Winchester was selected to replace Mr. Stewart effective June 1.